



SOON - In edit 5/29
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0025/P1 1

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D-NOTE

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 AN ACT *to repeal* 46.90 (1) (b), 46.90 (1) (c), 46.90 (1) (d), 46.90 (1) (e), 46.90 (4)
2 (a) 2., 46.90 (5) (d) 2., 46.90 (5) (g), 55.01 (1t), 55.01 (3), 55.01 (4p), 55.01 (7),
3 55.043 (1) (title), 55.043 (5), 55.043 (9), 813.123 (1) (c), 813.123 (1) (f), 813.123
4 (1) (h), 813.123 (11), 940.285 (1) (a), 940.285 (1) (b), (bm), (c) and (d), 940.285
5 (1) (e), 940.295 (1) (cm), 940.295 (1) (hm), 940.295 (1) (j), 940.295 (1) (jm),
6 940.295 (1) (kp), 940.295 (1) (n), 940.295 (1) (t) and 943.20 (2) (e); *to renumber*
7 940.225 (5) (ab), 940.295 (1) (a) and 943.20 (2) (a); *to renumber and amend*
8 46.90 (4) (a) 1., 46.90 (4) (b) 1. c., 46.90 (5) (a), 46.90 (5) (d) 1., 46.90 (6) (a), 46.90
9 (6) (c) 1., 46.90 (6) (c) 2., 46.90 (6) (c) 3., 55.043 (1) (a) (intro.), 55.043 (1) (a) 1.,
10 55.043 (1) (a) 2., 55.043 (1) (a) 3., 55.043 (1) (a) 4., 55.043 (1) (a) 5., 55.043 (1)
11 (b) (intro.), 55.043 (1) (b) 1., 55.043 (1) (b) 2. (intro.), 55.043 (1) (b) 2. a., 55.043
12 (1) (b) 2. b., 55.043 (2), 55.043 (4) (intro.), 55.043 (4) (a), 55.043 (4) (b), 55.043
13 (4) (c), 55.043 (4) (d), 55.043 (4) (e), 55.043 (4) (f), 813.123 (2), 813.123 (3) (b) 2.
14 and 3., 813.123 (4) (a) 2. and 880.01 (5); *to consolidate, renumber and*
15 *amend* 813.123 (3) (b) (intro.) and 1.; *to amend* 20.435 (7) (dh), 46.21 (2m) (c),

46.215 (1m), 46.22 (1) (dm), 46.23 (3) (e), 46.283 (4) (h), 46.286 (1) (intro.),
46.286 (3) (a) (intro.), 46.286 (3) (a) 3., 46.90 (1) (g), 46.90 (2), 46.90 (3) (title),
46.90 (3) (a), (b) and (c), 46.90 (4) (b) 1. b., 46.90 (4) (b) 2. c., 46.90 (4) (c), 46.90
(4) (d), 46.90 (5) (b) (intro.) and 1. to 5., 46.90 (5) (c), 46.90 (5) (f), 46.90 (5m) (title)
and (a), 46.90 (5m) (b), 46.90 (5m) (c), 46.90 (6) (b) (intro.), 46.90 (6) (b) 1., 46.90
(6) (b) 2., 46.90 (6) (b) 3., 46.90 (6) (b) 4., 46.90 (6) (b) 5., 46.90 (6) (b) 6., 46.90
(6) (b) 7., 46.90 (7), 46.90 (8) (a), 46.90 (8) (b), 46.90 (8) (c) and (d), 49.498 (3) (b)
1., 50.09 (1) (k), 51.01 (2g) (b), 51.01 (3g), 51.01 (5) (a), 51.30 (4) (b) 17., 51.42
(3) (e), 51.437 (4r) (b), 51.62 (3) (a) 2m., 55.001, 55.01 (1m), 55.01 (2), 55.02,
55.043 (title), 55.043 (3), 55.043 (4) (title), 55.06 (2) (c), 55.06 (11) (a), 106.54 (5),
146.40 (4g) (a) 3., 146.40 (4r) (a), 146.40 (4r) (am) 1., 146.40 (4r) (am) 2., 146.40
(4r) (am) 3., 146.40 (4r) (b), 146.82 (2) (a) 7., 813.123 (title), 813.123 (1) (a),
813.123 (1) (b), 813.123 (1) (g), 813.123 (4) (a) (intro.), 813.123 (5) (a) (intro.),
813.123 (5) (a) 3. a., 813.123 (5) (a) 3. b., 813.123 (5) (c) 1., 2. and 3., 813.123 (6)
(a), 813.123 (6) (c), 813.123 (7), 813.123 (9) (intro.), 880.01 (2), 880.01 (4), 895.85
(2), 940.285 (title), 940.285 (2) (title) and (a) 1. to 3., 940.295 (1) (b), 940.295 (1)
(o), 940.295 (3) (a) 3., 940.295 (3) (b) 1g., 940.295 (3) (b) 1m. and 943.20 (3) (d)
6.; to repeal and recreate 46.90 (1) (a), 46.90 (1) (f), 46.90 (5) (title), 51.62 (1)
(ag), 51.62 (1) (br), 55.01 (1), 55.01 (1p), 55.01 (4r), 940.295 (1) (k) and 940.295
(1) (km); and **to create** 46.90 (1) (aj), 46.90 (1) (an), 46.90 (1) (br), 46.90 (1) (bt),
46.90 (1) (cm), 46.90 (1) (ed), 46.90 (1) (eg), 46.90 (1) (er), 46.90 (1) (fg), 46.90 (1)
(gd), 46.90 (1) (gr), 46.90 (1) (h), 46.90 (1) (i), 46.90 (4) (ab), 46.90 (4) (ad), 46.90
(4) (ae), 46.90 (4) (b) 1. cm., 46.90 (4) (e), 46.90 (5) (a) 2., 46.90 (5) (b) 6., 46.90
(5) (br), 46.90 (5) (h), 46.90 (5m) (br), 46.90 (6) (ac), 46.90 (6) (b) 9. and 10., 46.90
(6) (bd), 46.90 (6) (br), 46.90 (6) (bt), 46.90 (6) (bv), (bw) and (by), 46.90 (9) (title)

1 and (e), 51.62 (1) (ar), 55.01 (1e), 55.01 (1f), 55.01 (1v), 55.01 (2s), 55.01 (4g),
2 55.01 (6), 55.01 (6b), 55.043 (1d), 55.043 (1g), 55.043 (1m), 55.043 (1r) (title),
3 55.043 (1r) (a) 2., 55.043 (1r) (b) (intro.), 55.043 (1r) (b) 3., 55.043 (1r) (b) 6. a.,
4 55.043 (1r) (b) 6. b., 55.043 (1r) (c) 2. b., 55.043 (1r) (d), 55.043 (2) (b), 55.043 (4)
5 (am), 55.043 (5g), 55.043 (6), 55.043 (7), 55.043 (8), 55.043 (9m), 146.40 (1) (ab),
6 146.40 (1) (aw), 813.123 (1) (ae), 813.123 (1) (am), 813.123 (1) (br), 813.123 (1)
7 (cg), 813.123 (1) (dm), 813.123 (1) (eg), 813.123 (1) (ep), 813.123 (1) (fm), 813.123
8 (1) (gr), 813.123 (1) (gs), 813.123 (2) (b), 813.123 (3) (c) (intro.), 813.123 (4) (a)
9 2. b., 813.123 (4) (ar), 813.123 (5) (a) 3. c., 813.123 (5) (ar), 940.225 (2) (j),
10 940.225 (5) (abm) and (ak), 940.285 (1) (ag), 940.285 (1) (am), 940.285 (1) (dc),
11 940.285 (1) (dg), 940.295 (1) (ad), 940.295 (1) (ag), 943.20 (2) (ac), 943.20 (2) (ad)
12 and 943.20 (2) (ae) of the statutes; **relating to:** adult protective services and
13 providing penalties.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.435 (7) (dh) of the statutes is amended to read:

20.435 (7) (dh) *Programs for senior citizens; elder abuse services; benefit specialist program.* The amounts in the schedule for the programs for senior citizens, including but not limited to the purpose of distributing funds under s. 46.80 (2m) (b) to supplement any federal foster grandparent project funds received under 42 USC 5011 (a) and the purposes of ss. 46.80 (5) and 46.85; for direct services for elder persons and other individuals adults at risk under s. 46.90 (5m); and for the benefit

1 specialist program for older persons under s. 46.81. Notwithstanding ss. 20.001 (3)
2 (a) and 20.002 (1), the department of health and family services may transfer funds
3 between fiscal years under this paragraph. All funds allocated under ss. 46.80 (2m)
4 (b) and (5), 46.81 (2) and 46.85 but not encumbered by December 31 of each year lapse
5 to the general fund on the next January 1, unless transferred to the next calendar
6 year by the joint committee on finance, but the department may carry forward funds
7 allocated under s. 46.90 (5m) that are not encumbered by June 30 of each year for
8 allocation under s. 46.90 (5m) in the following state fiscal year. For the purposes of
9 this paragraph, funds are encumbered by December 31 if allocated for services
10 received or for goods ordered by December 31.

11 **SECTION 2.** 46.21 (2m) (c) of the statutes is amended to read:

12 46.21 (2m) (c) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
13 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7) and
14 253.07 (3) (c), any a subunit of the a county department of human services or tribal
15 agency acting under this subsection may exchange confidential information about a
16 client, without the informed consent of the client, with any other subunit of the same
17 county department of human services or tribal agency, with a resource center, a care
18 management organization, or a family care district, with an elder-adult-at-risk
19 agency, an adult-at-risk agency, or any agency to which referral for investigation is
20 made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with any a person providing
21 services to the client under a purchase of services contract with the county
22 department of human services or tribal agency or with a resource center, a care
23 management organization, or a family care district, if necessary to enable an
24 employee or service provider to perform his or her duties, or to enable the county
25 department of human services or tribal agency to coordinate the delivery of services

1 to the client. An agency that releases information under this paragraph shall
2 document that a request for information was received and what information was
3 provided.

4 **SECTION 3.** 46.215 (1m) of the statutes is amended to read:

5 46.215 **(1m)** EXCHANGE OF INFORMATION. Notwithstanding ss. 46.2895 (9), 48.78
6 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07
7 (3) (c) and 938.78 (2) (a), any a subunit of the a county department of social services
8 or tribal agency acting under this section may exchange confidential information
9 about a client, without the informed consent of the client, with any other subunit of
10 the same county department of social services or tribal agency, with a resource
11 center, a care management organization, or a family care district, with an
12 elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral
13 for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with any
14 a person providing services to the client under a purchase of services contract with
15 the county department of social services or tribal agency or with a resource center,
16 a care management organization, or a family care district, if necessary to enable an
17 employee or service provider to perform his or her duties, or to enable the county
18 department of social services or tribal agency to coordinate the delivery of services
19 to the client. An agency that releases information under this subsection shall
20 document that a request for information was received and what information was
21 provided.

22 **SECTION 4.** 46.22 (1) (dm) of the statutes is amended to read:

23 46.22 **(1)** (dm) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
24 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07
25 (3) (c) and 938.78 (2) (a), any a subunit of the a county department of social services

1 or tribal agency acting under this subsection may exchange confidential information
2 about a client, without the informed consent of the client, with any other subunit of
3 the same county department of social services or tribal agency, with a resource
4 center, a care management organization, or a family care district, with an
5 elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral
6 for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with any
7 a person providing services to the client under a purchase of services contract with
8 the county department of social services or tribal agency or with a resource center,
9 a care management organization, or a family care district, if necessary to enable an
10 employee or service provider to perform his or her duties, or to enable the county
11 department of social services or tribal agency to coordinate the delivery of services
12 to the client. An agency that releases information under this paragraph shall
13 document that a request for information was received and what information was
14 provided.

15 **SECTION 5.** 46.23 (3) (e) of the statutes is amended to read:

16 46.23 (3) (e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78
17 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07
18 (3) (c) and 938.78 (2) (a), ~~any~~ a subunit of a county department of human services or
19 tribal agency acting under this section may exchange confidential information about
20 a client, without the informed consent of the client, with any other subunit of the
21 same county department of human services or tribal agency, with a resource center,
22 a care management organization, or a family care district, with an
23 elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral
24 for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with any
25 a person providing services to the client under a purchase of services contract with

1 the county department of human services or tribal agency or with a resource center,
2 a care management organization, or a family care district, if necessary to enable an
3 employee or service provider to perform his or her duties, or to enable the county
4 department of human services or tribal agency to coordinate the delivery of services
5 to the client. An agency that releases information under this paragraph shall
6 document that a request for information was received and what information was
7 provided.

8 **SECTION 6.** 46.283 (4) (h) of the statutes is amended to read:

9 46.283 (4) (h) Provide access to services under s. 46.90 and ch. 55 to a person
10 who is eligible for the services, through cooperation with the county
11 elder-adult-at-risk agency or the adult-at-risk agency or agencies that provide
12 provides the services.

13 **SECTION 7.** 46.286 (1) (intro.) of the statutes is amended to read:

14 46.286 (1) ELIGIBILITY. (intro.) A person is eligible for, but not necessarily
15 entitled to, the family care benefit if the person is at least 18 years of age; has a
16 physical disability, as defined in s. 15.197 (4) (a) 2., a developmental disability, as
17 defined in s. 51.01 (5) (a), or infirmities of aging degenerative brain disorder, as
18 defined in s. 55.01 (3) (1v); and meets all of the following criteria:

19 **SECTION 8.** 46.286 (3) (a) (intro.) of the statutes is amended to read:

20 46.286 (3) (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may
21 receive the family care benefit through enrollment in a care management
22 organization if he or she is at least 18 years of age, has a physical disability, as defined
23 in s. 15.197 (4) (a) 2., a developmental disability, as defined in s. 51.01 (5) (a), or
24 infirmities of aging degenerative brain disorder, as defined in s. 55.01 (3) (1v), is

1 financially eligible, fulfills any applicable cost-sharing requirements and meets any
2 of the following criteria:

3 **SECTION 9.** 46.286 (3) (a) 3. of the statutes is amended to read:

4 46.286 (3) (a) 3. Is functionally eligible at the intermediate level and is
5 determined by an elder-adult-at-risk agency under s. 46.90 (2) or ~~specified in s.~~
6 ~~55.01 (1t)~~ an adult-at-risk agency designated under s. 55.02 to be in need of
7 protective services under s. 55.05 or protective placement under s. 55.06.

8 **SECTION 10.** 46.90 (1) (a) of the statutes is repealed and recreated to read:

9 46.90 (1) (a) "Abuse" means any of the following:

- 10 1. Physical abuse.
- 11 2. Emotional abuse.
- 12 3. Sexual abuse.
- 13 4. Treatment without consent.
- 14 5. Unreasonable confinement or restraint.

15 **SECTION 11.** 46.90 (1) (aj) of the statutes is created to read:

16 46.90 (1) (aj) "Bodily harm" means physical pain or injury, illness, or any
17 impairment of physical condition.

18 **SECTION 12.** 46.90 (1) (an) of the statutes is created to read:

19 46.90 (1) (an) "Caregiver" means a person who has assumed responsibility for
20 all or a portion of an individual's care voluntarily, by contract, or by agreement,
21 including a person acting or claiming to act as a legal guardian.

22 **SECTION 13.** 46.90 (1) (b) of the statutes is repealed.

***NOTE: I eliminated the definition of "degenerative brain disorder" proposed for
s. 46.90 (1) (bg), because the term is not used in this section.

23 **SECTION 14.** 46.90 (1) (br) of the statutes is created to read:

1 46.90 (1) (br) “Elder adult at risk” means any person age 60 or older who has
2 experienced, is currently experiencing, or is at risk of experiencing abuse, neglect,
3 or financial exploitation. *self-neglect, ✓*

****NOTE: Why isn't self-neglect included in this definition? Without it, a provision such as s. 46.90 (5) (f), which refers directly to an elder adult at risk, would not work if the elder adult at risk was incurring problems that are only related to self-neglect. Is that intentional?

4 **SECTION 15.** 46.90 (1) (bt) of the statutes is created to read:

5 46.90 (1) (bt) “Elder-adult-at-risk agency” means the agency designated by
6 the county board of supervisors under sub. (2) to receive, respond to, and investigate
7 reports of abuse, neglect, self-neglect, and financial exploitation under sub. (4).

8 **SECTION 16.** 46.90 (1) (c) of the statutes is repealed.

9 **SECTION 17.** 46.90 (1) (cm) of the statutes is created to read:

10 46.90 (1) (cm) “Emotional abuse” means language or behavior that serves no
11 legitimate purpose and is intended to be intimidating, humiliating, threatening,
12 frightening, or otherwise harassing, and that does or reasonably could intimidate,
13 humiliate, threaten, frighten, or otherwise harass the individual to whom the
14 conduct or language is directed.

****NOTE: I added “humiliate” after “intimidate,” to make the second clause congruent with the first.

15 **SECTION 18.** 46.90 (1) (d) of the statutes is repealed.

16 **SECTION 19.** 46.90 (1) (e) of the statutes is repealed.

17 **SECTION 20.** 46.90 (1) (ed) of the statutes is created to read:

18 46.90 (1) (ed) “Financial exploitation” means any of the following:

19 1. Obtaining an individual's money or property by deceiving or enticing the
20 individual, or by forcing, compelling, or coercing the individual to give, sell at less

1 than fair market value, or in other ways convey money or property against his or her
2 will without his or her informed consent.

3 2. Theft, as prohibited in s. 943.20.

4 3. The substantial failure or neglect of a fiscal agent to fulfill his or her
5 responsibilities.

6 **SECTION 21.** 46.90 (1) (eg) of the statutes is created to read:

7 46.90 (1) (eg) “Fiscal agent” includes any of the following:

8 1. A guardian of the estate appointed under s. 880.03.

9 2. A conservator appointed under s. 880.31.

10 3. An agent under a financial power of attorney under s. 243.07.

11 4. A representative payee under 20 CFR 416.635.

12 5. A conservatorship under the U.S. department of veterans affairs.

13 **SECTION 22.** 46.90 (1) (er) of the statutes is created to read:

14 46.90 (1) (er) “Investigative agency” means a law enforcement or a city, town,
15 village, county, or state governmental agency or unit with functions relating to
16 protecting health, welfare, safety, or property, including an agency concerned with
17 animal protection, public health, building code enforcement, consumer protection,
18 or insurance or financial institution regulation.

19 **SECTION 23.** 46.90 (1) (f) of the statutes is repealed and recreated to read:

20 46.90 (1) (f) “Neglect” means the failure of a caregiver, as evidenced by an act,
21 omission, or course of conduct, to endeavor to secure or maintain adequate care,
22 services, or supervision for an individual, including food, clothing, shelter, or
23 physical or mental health care, and creating significant risk or danger to the
24 individual’s physical or mental health. “Neglect” does not include a decision that is
25 made to not seek medical care for an individual, if that decision is consistent with the

individual's previously executed declaration or do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law.

SECTION 24. 46.90 (1) (fg) of the statutes is created to read:

46.90 (1) (fg) "Physical abuse" means the intentional or reckless infliction of bodily harm.

SECTION 25. 46.90 (1) (g) of the statutes is amended to read:

46.90 (1) (g) "Self-neglect" means a significant danger to an ~~elder person's~~ individual's physical or mental health because the ~~elder person~~ individual is responsible for his or her own care but ~~is unable~~ fails to provide obtain adequate care, including food, shelter, clothing, or medical or dental care.

SECTION 26. 46.90 (1) (gd) of the statutes is created to read:

46.90 (1) (gd) "Sexual abuse" means a violation of s. 940.225 (1), (2), (3), or (3m).

SECTION 27. 46.90 (1) (gr) of the statutes is created to read:

46.90 (1) (gr) "State official" means any law enforcement officer employed by the state or an employee of one of the following:

1. The department of health and family services.

2. The department of justice.

3. The department of regulation and licensing.

4. The board on aging and long-term care.

5. state governmental [✓] An agency other than those specified in subds. 1. to 4. with functions relating to protecting health and safety.

SECTION 28. 46.90 (1) (h) of the statutes is created to read:

46.90 (1) (h) "Treatment without consent" means the administration of medication to an individual who has not provided informed consent, or the

1 performance of psychosurgery, electroconvulsive therapy, or experimental research
2 on an individual who has not provided informed consent, with the knowledge that
3 no lawful authority exists for the administration or performance.

4 **SECTION 29.** 46.90 (1) (i) of the statutes is created to read:

5 46.90 (1) (i) "Unreasonable confinement or restraint" includes the intentional
6 and unreasonable confinement of an individual in a locked room, involuntary
7 separation of an individual from his or her living area, use on an individual of
8 physical restraining devices, or the provision of unnecessary or excessive medication
9 to an individual, but does not include the use of these methods or devices in entities
10 regulated by the department if the methods or devices are employed in conformance
11 with state and federal standards governing confinement and restraint.

12 **SECTION 30.** 46.90 (2) of the statutes is amended to read:

13 46.90 (2) ~~COUNTY~~ ELDER-ADULT-AT-RISK AGENCY DESIGNATION. Each county
14 board shall designate an agency in the county as the ~~county~~ elder-adult-at-risk
15 agency for the purposes of this section.

16 **SECTION 31.** 46.90 (3) (title) of the statutes is amended to read:

17 46.90 (3) (title) ~~COUNTY~~ ELDER-ADULT-AT-RISK AGENCY DUTIES.

18 **SECTION 32.** 46.90 (3) (a), (b) and (c) of the statutes are amended to read:

19 46.90 (3) (a) Each ~~county~~ elder-adult-at-risk agency shall develop a policy for
20 notifying other investigative agencies, including law enforcement officials in
21 appropriate cases, and shall establish an elder abuse reporting system to carry out
22 the purposes of this section. Each ~~county~~ elder-adult-at-risk agency shall enter into
23 a memorandum of understanding regarding the operation of the system with the
24 county department under s. 46.215 or 46.22 and with any private or public agency,
25 including a county department under s. 51.42 or 51.437, within the county that is

1 participating in the elder abuse reporting system. The memorandum of
2 understanding shall, at a minimum, identify the agencies that are responsible for the
3 investigation of reports of abuse, ~~material abuse~~ financial exploitation, neglect, or
4 self-neglect of elder adults at risk and for the provision of specific direct services.

5 (b) Each ~~county elder-adult-at-risk~~ agency shall receive reports of abuse,
6 ~~material abuse~~ financial exploitation, neglect, or self-neglect of elder ~~persons~~ adults
7 at risk.

8 (c) Each ~~county elder-adult-at-risk~~ agency shall publicize the existence of an
9 elder abuse reporting system in the county and shall provide a publicized telephone
10 number ~~which~~ that can be used by persons wishing to report suspected cases of
11 abuse, ~~material abuse~~ financial exploitation, neglect, or self-neglect of elder adults
12 at risk. Each ~~elder-adult-at-risk~~ agency shall also provide a telephone number that
13 can be used to make reports after the elder-adult-at-risk agency's regular business
14 hours.

15 SECTION 33. 46.90 (4) (a) 1. of the statutes is renumbered 46.90 (4) (ar) and
16 amended to read:

17 46.90 (4) (ar) Any person, including an attorney or a person working under the
18 supervision of an attorney, may report to the county agency ~~or to any state official,~~
19 ~~including any representative of the office of the long-term care ombudsman under~~
20 ~~s. 16.009 (4),~~ department, the elder-adult-at-risk agency, a state or local law
21 enforcement agency, the department, or the board on aging and long-term care that
22 he or she believes that abuse, ~~material abuse or~~ financial exploitation, neglect, or
23 self-neglect of an elder adult at risk has occurred if the person is aware of facts or
24 circumstances that would lead a reasonable person to believe or suspect that abuse,
25 ~~material abuse or~~ financial exploitation, neglect, or self-neglect of an elder adult at

1 risk has occurred. The person shall indicate the facts and circumstances of the
2 situation as part of the report.

3 **SECTION 34.** 46.90 (4) (a) 2. of the statutes is repealed.

****NOTE: I have repealed this subdivision because it addresses self-neglect, which
has been added to s. 46.90 (4) (ar) (renumbered from s. 46.90 (4) (a) 1., stats.). Is that what
you wish?

4 **SECTION 35.** 46.90 (4) (ab) of the statutes is created to read:

5 46.90 (4) (ab) The following persons shall file reports as specified in par. (ad):

6 1. An employee of any entity that is licensed, certified, or approved by or
7 registered with the department.

8 2. An employee of a financial institution, as defined in s. 705.01 (3).

9 3. A health care provider, as defined in s. 155.01 (7).

10 4. A social worker, professional counselor, or marriage and family therapist
11 certified under ch. 457.

12 **SECTION 36.** 46.90 (4) (ad) of the statutes is created to read:

13 46.90 (4) (ad) Except as provided in par. (ae), a person specified in par. (ab) who
14 has seen an elder adult at risk in the course of the person's professional duties shall
15 file a report with the county department, the elder-adult-at-risk agency, a state or
16 local law enforcement agency, the department, or the board on aging and long-term
17 care if the elder adult at risk has requested the person to make the report, or if the
18 person has reasonable cause to believe that any of the following situations exist:

19 1. The elder adult at risk is at imminent risk of serious bodily harm, death, or
20 significant property loss and is unable to make an informed judgment about whether
21 to report the risk.

✓
Sexual assault,

1 2. An elder adult at risk other than the subject of the report is at risk of serious
2 bodily harm, death, sexual assault, or significant property loss inflicted by a
3 suspected perpetrator.

****NOTE: Please see my changes to this provision. Why is sexual assault included
in this provision but not in subd. 1.?

4 **SECTION 37.** 46.90 (4) (ae) of the statutes is created to read:

5 46.90 (4) (ae) A person specified in par. (ab) is not required to file a report as
6 provided in par. (ad) if the person believes that filing a report would not be in the best
7 interest of the elder adult at risk. If the person so believes, the person shall document
8 the reasons for this belief in the case file that the person maintains on the elder adult
9 at risk.

***NOTE: Note my change to the second sentence. I have assumed that "case file"
refers to the file on the elder adult at risk that the person makes and keeps in the course
of his or her professional duties. Is that correct, or is it, instead, a file that is maintained
by the elder adult-at-risk agency?

10 **SECTION 38.** 46.90 (4) (b) 1. b. of the statutes is amended to read:

11 46.90 (4) (b) 1. b. No person may discharge or otherwise retaliate or
12 discriminate against any person individual on whose behalf another person has
13 reported in good faith under this subsection.

14 **SECTION 39.** 46.90 (4) (b) 1. c. of the statutes is renumbered 46.90 (9) (d) and
15 amended to read:

16 46.90 (9) (d) Any person who violates ~~this subdivision~~ sub. (4) (b) 1. may be
17 fined not more than ~~\$1,000~~ \$10,000 or imprisoned for not more than 6 months or
18 both.

19 **SECTION 40.** 46.90 (4) (b) 1. cm. of the statutes is created to read:

20 46.90 (4) (b) 1. cm. Any discharge of a person or act of retaliation or
21 discrimination that is taken against a person who makes a report under this

1 subsection, within 120 days after the report is made, establishes a rebuttable
2 presumption that the discharge or act is made in response to the report. This
3 presumption may be rebutted by a preponderance of evidence that the discharge or
4 act was not made in response to the report.

5 **SECTION 41.** 46.90 (4) (b) 2. c. of the statutes is amended to read:

6 46.90 (4) (b) 2. c. Any person not described in subd. 2. b. who is retaliated or
7 discriminated against in violation of subd. 1. a. or b. may commence an action in
8 circuit court for damages incurred as a result of the violation.

9 **SECTION 42.** 46.90 (4) (c) of the statutes is amended to read:

10 46.90 (4) (c) No person may be held civilly or criminally liable or be found guilty
11 of unprofessional conduct for reporting in good faith under this subsection and
12 within the scope of his or her authority, or for filing a report with an agency not listed
13 in par. (ad) (intro.) or (ar) if the person had a good faith belief that the report was filed
14 correctly with one of the listed agencies.

15 **SECTION 43.** 46.90 (4) (d) of the statutes is amended to read:

16 46.90 (4) (d) If a report under par. (a) (ad) or (ar) is made to a state official, the
17 state official shall refer the report to the appropriate county elder-adult-at-risk
18 agency.

19 **SECTION 44.** 46.90 (4) (e) of the statutes is created to read:

20 46.90 (4) (e) Any person making a report under this subsection is presumed to
21 have reported in good faith.

22 **SECTION 45.** 46.90 (5) (title) of the statutes is repealed and recreated to read:

23 46.90 (5) (title) RESPONSE AND INVESTIGATION.

24 **SECTION 46.** 46.90 (5) (a) of the statutes is renumbered 46.90 (5) (a) 1. and
25 amended to read:

1 46.90 (5) (a) 1. Except as otherwise provided, upon receiving a report of alleged
2 abuse, ~~material abuse~~ financial exploitation, neglect, or self-neglect of an elder adult
3 at risk, the county elder-adult-at-risk agency shall either ~~investigate~~ respond to the
4 report including, if necessary, by conducting an investigation, or refer the report to
5 another agency for investigation. Upon receiving a report of alleged abuse, ~~material~~
6 abuse financial exploitation, neglect, or self-neglect of an ~~elder person who resides~~
7 ~~in a community-based residential facility or a nursing home licensed under s. 50.03~~
8 ~~or of an elder person who receives services from a home health agency licensed under~~
9 ~~s. 50.49 and the person suspected of abusing or neglecting the person is an employee~~
10 ~~of the home health agency a client, as defined in s. 50.065 (1) (b), of an entity, as~~
11 ~~defined in s. 50.065 (1) (c), if the person suspected of perpetrating the alleged abuse,~~
12 financial exploitation, or neglect is a caregiver or a nonclient resident of the entity,
13 the county elder-adult-at-risk agency may not investigate the report but it shall
14 refer the report within 24 hours after the report is received, ~~excluding Saturdays,~~
15 ~~Sundays and legal holidays,~~ to the department for investigation. An investigation
16 The department shall coordinate its investigatory efforts with other investigatory
17 agencies or authorities as appropriate. An elder-adult-at-risk agency's response to
18 or another investigative agency's investigation of a report of alleged abuse, financial
19 exploitation, neglect, or self-neglect that is not referred to the department shall be
20 commenced within 24 hours after a report is received, excluding Saturdays, Sundays
21 and legal holidays. ~~An investigation of a report of material abuse shall be~~
22 ~~commenced within 5 days after a report is received, excluding Saturdays, Sundays~~
23 ~~and legal holidays. If a report is referred to the department, pars. (b) to (g) and sub.~~
24 ~~(6) do not apply to the department.~~

investigative

****NOTE: I have changed “county department” to “elder-adult-at-risk agency” and “agency” to “investigative agency” in this subdivision, as agreed.

****NOTE: There still are differences in this subdivision from s. 55.043 (1r) (a) 1g. (although I understand that an elder-at-risk agency is required to respond or refer and an adult-at-risk agency is authorized to do so). Please look at the first sentence; which version do you prefer, or should they stay as they are? Please also see my addition of “that is not referred to the department” in the last sentence; correct? I have added “including, if necessary, by conducting an investigation” in the first sentence and made a similar, but not identical change in the first sentence of s. 55.043 (1r) (a) 1g.

1 **SECTION 47.** 46.90 (5) (a) 2. of the statutes is created to read:

2 46.90 (5) (a) 2. If an agent or employee of an elder-adult-at-risk agency
3 required to respond under this subsection is the subject of a report, or if the
4 elder-adult-at-risk agency or an agency under contract with the county department
5 determines that the relationship between the elder-adult-at-risk agency and the
6 agency under contract with the county department would not allow for an unbiased
7 response, the elder-adult-at-risk agency shall, after taking any action necessary to
8 protect the elder adult at risk, notify the department. Upon receipt of the notice, the
9 department or a county department under s. 46.215, 46.22, 51.42, or 51.437
10 designated by the department shall conduct an independent investigation. The
11 powers and duties of a county department making an independent investigation are
12 those given to an elder-adult-at-risk agency under pars. (b) to (f) and sub. (6).

****NOTE: Note that I have reversed the order proposed for s. 46.90 (5) (a) 1. and 2., because it fits better chronologically. I have made numerous changes in this provision and in s. 55.043 (1r) (a) 2. in light of previous changes; please review very carefully, as we did not discuss this provision.

13 **SECTION 48.** 46.90 (5) (b) (intro.) and 1. to 5. of the statutes are amended to read:

14 46.90 (5) (b) (intro.) The scope of the elder-adult-at-risk agency's response or
15 another investigative agency's investigation is at the discretion of the investigating
16 agency and may include one or more of the following:

****NOTE: I have changed “county department” to “elder-adult-at-risk agency” and “agency” to “investigative agency,” as agreed.

17 1. A visit to the elder person's residence of the elder adult at risk.

1 2. Observation of the elder person adult at risk, with or without consent of his
2 or her guardian or agent under an activated power of attorney for health care, if any.

3 3. An interview with the elder person. ~~To the extent practicable, this interview~~
4 shall be private adult at risk, in private to the extent practicable, and with or without
5 the consent of his or her guardian or agent under an activated power of attorney for
6 health care, if any.

7 4. An interview with the guardian or agent under an activated power of
8 attorney for health care, if any, and with any person who takes care caregiver of the
9 elder person adult at risk.

10 5. A review of the treatment and patient health care records of the elder adult
11 at risk.

12 **SECTION 49.** 46.90 (5) (b) 6. of the statutes is created to read:

13 46.90 (5) (b) 6. A review of any financial records of the elder adult at risk that
14 are maintained by a financial institution, as defined in s. 705.01 (3); by an entity, as
15 defined in s. 50.065; by any caregiver of the elder adult at risk; or by a member of the
16 immediate family of the elder adult at risk or caregiver. The records shall be released
17 without informed consent in either of the following circumstances:

****NOTE: Please see my ****NOTE under s. 55.043 (1r) (b) 6. (intro.) (renumbered
from s. 55.043 (1) (a) 5.).

18 a. To an elder-adult-at-risk agency or other investigative agency under this
19 section. The financial record holder may release financial record information by
20 initiating contact with the elder-adult-at-risk agency or other investigative agency
21 without first receiving a request for release of the information from the
22 elder-adult-at-risk agency or other investigative agency.

23 b. Under a lawful order of a court of record.

1 **SECTION 50.** 46.90 (5) (br) of the statutes is created to read:

2 46.90 (5) (br) The elder-adult-at-risk agency or other investigative agency
3 may transport the elder adult at risk for performance of a medical examination by
4 a physician if any of the following applies:

5 1. The elder adult at risk or his or her guardian or agent under an activated
6 power of attorney for health care, if any, consents to the examination.

7 2. The elder adult at risk is incapable of consenting to the examination and one
8 of the following applies:

9 a. The elder adult at risk has no guardian or agent under an activated power
10 of attorney for health care.

11 b. The elder adult at risk has a guardian or ^{an}agent under an activated power of
12 attorney for health care, but that guardian or agent is the person suspected of
13 abusing, neglecting, or financially exploiting the elder adult at risk.

14 c. The examination is authorized by order of a court.

15 **SECTION 51.** 46.90 (5) (c) of the statutes is amended to read:

16 46.90 (5) (c) ~~If an investigator so requests, The elder-adult-at-risk agency may~~
17 request a sheriff or police officer shall to accompany the elder-adult-at-risk agency
18 investigator or worker during visits to the elder person's residence and shall provide
19 of the elder adult at risk or request other assistance as needed. If the request is made,
20 a sheriff or police officer shall accompany the elder-adult-at-risk agency
21 investigator or worker to the residence of the elder adult at risk and shall provide
22 other assistance as requested or necessary.

****NOTE: This provision now corresponds to s. 55.043 (2) (a).

23 **SECTION 52.** 46.90 (5) (d) 1. of the statutes is renumbered 46.90 (5) (d) and
24 amended to read:

1 46.90 (5) (d) If ~~any a person except the elder person in question~~ interferes with
2 the response or investigation under this subsection or interferes with the delivery of
3 protective services under ch. 55 to the elder adult at risk, the elder-adult-at-risk
4 agency investigator or worker may apply for an order under ~~ch. 813 s. 813.123~~
5 prohibiting the interference.

***NOTE: This provision now corresponds to s. 55.043 (3).

6 SECTION 53. 46.90 (5) (d) 2. of the statutes is repealed.

7 SECTION 54. 46.90 (5) (f) of the statutes is amended to read:

8 46.90 (5) (f) If the ~~investigator~~ elder-adult-at-risk agency worker or
9 investigator or other agency investigator has reason to believe that substantial
10 physical harm, irreparable injury, or death may occur to an elder ~~person~~ adult at risk,
11 the worker or investigator shall ~~immediately notify the protective services agency~~
12 ~~designated under s. 55.02~~ request immediate assistance in either initiating a
13 protective services action under ch. 55 or contact law enforcement or another public
14 agency, as appropriate.

15 SECTION 55. 46.90 (5) (g) of the statutes is repealed.

16 SECTION 56. 46.90 (5) (h) of the statutes is created to read:

17 46.90 (5) (h) No person may be held civilly or criminally liable or be found guilty
18 of unprofessional conduct for responding to a report or for participating in or
19 conducting an investigation under this subsection, including the taking of
20 photographs or the conducting of a medical examination, if the response or
21 investigation was performed in good faith and within the scope of his or her authority.

22 SECTION 57. 46.90 (5m) (title) and (a) of the statutes are amended to read:

23 46.90 (5m) (title) PROVISION OFFER OF SERVICES AND REFERRAL OF CASES. (a) ~~After~~
24 ~~the investigation is completed~~ Upon responding to a report, the county

1 elder-adult-at-risk agency or the ~~investigating~~ investigative agency shall
2 determine if whether the elder person adult at risk or any other individual involved
3 in the alleged abuse, ~~material-abuse~~ financial exploitation, neglect, or self-neglect
4 is in need of services under this chapter or ch. 47, 49, 51 ~~or~~ 55 or 880. From the
5 appropriation under s. 20.435 (7) (dh), the department shall allocate to selected
6 counties not less than \$25,000 in each fiscal year, and within the limits of these funds
7 and of available state and federal funds and of county funds appropriated to match
8 the state and federal funds, the ~~county~~ elder-adult-at-risk agency shall provide the
9 necessary direct services to the elder person adult at risk or other individual or
10 arrange for the provision of the direct services with other agencies or individuals.
11 Those direct services provided shall be rendered under the least restrictive
12 conditions necessary to achieve their objective.

***NOTE: Note the differences between this provision and s. 55.043 (4) (am), as we
discussed. Should any other changes be made?

elder-adult-at-risk

13 **SECTION 58.** 46.90 (5m) (b) of the statutes is amended to read:

14 46.90 (5m) (b) If the ~~county agency designated under sub. (2)~~
15 elder-adult-at-risk agency is not the aging unit, the ~~county~~ ✓ agency in each county
16 shall consult with and accept advice from the aging unit with respect to the
17 distribution of the funds for direct services that are allocated under par. (a).

18 **SECTION 59.** 46.90 (5m) (br) of the statutes is created to read:

19 46.90 (5m) (br) If, after responding to a report, the elder-adult-at-risk agency
20 has reason to believe that the elder adult at risk has been the subject of abuse,
21 financial exploitation, neglect, or self-neglect, the elder-adult-at-risk agency may
22 do any of the following:

1 1. Request immediate assistance in initiating a protective services action under
2 ch. 55 or contact an investigative agency, as appropriate.

***NOTE: Do my changes to this provision and other changes to s. 55.043 (4) (a) (renumbered s. 55.043 (4) (b) 1.) reflect your intent?

3 2. Take appropriate emergency action, including emergency protective
4 placement under s. 55.06, if the elder-adult-at-risk agency determines that the
5 emergency action is in the best interests of the elder adult at risk and the emergency
6 action is the least restrictive appropriate intervention.

7 3. Refer the case to law enforcement officials, as specified in sub. (3) (a), for
8 further investigation or to the district attorney, if the elder-adult-at-risk agency has
9 reason to believe that a crime has been committed.

10 4. Refer the case to the licensing, permitting, registration, or certification
11 authorities of the department or to other regulatory bodies if the residence, facility,
12 or program for the elder adult at risk is or should be licensed, permitted, registered,
13 or certified or is otherwise regulated.

14 5. Refer the case to the department of regulation and licensing if the financial
15 exploitation, neglect, self-neglect, or abuse involves an individual who is required
16 to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.

***NOTE: Should self-neglect be included in this provision?

17 6. Bring ~~or refer for action to bring~~ a petition for a guardianship and protective
18 services or protective placement under ch. 55 or a review of an existing guardianship
19 if necessary to prevent financial exploitation, neglect, self-neglect, or abuse and if
20 the elder adult at risk would otherwise be at risk of serious harm because of an
21 inability to arrange for necessary food, clothing, shelter, or services.

***NOTE: To whom should the reference be made? Note that I added to "refer" "for action to bring a petition" for this provision and for s. 55.043 (4) (f) (renumbered s. 55.043

(4) (b) 6.); is it appropriate for an adult-at-risk agency to refer, or would it initiate a petition?

1 **SECTION 60.** 46.90 (5m) (c) of the statutes is amended to read:

2 46.90 (5m) (c) An elder ~~person~~ adult at risk may refuse to accept services unless
3 a guardian authorizes the services. The county ~~elder-adult-at-risk~~ agency or other
4 provider agency shall notify the elder ~~person~~ adult at risk of this right to refuse before
5 providing services.

6 **SECTION 61.** 46.90 (6) (a) of the statutes is renumbered 46.90 (6) (am) and
7 amended to read:

8 46.90 (6) (am) The county ~~elder-adult-at-risk~~ agency ~~or other investigating~~
9 agency shall prepare a departmental report ~~on each investigation it conducts unless~~
10 ~~the agency finds, at the conclusion of the investigation, that the report of alleged~~
11 ~~abuse, material abuse, neglect or self-neglect is without foundation~~ form of its
12 response under sub. (5) to a report of suspected abuse, financial exploitation, neglect,
13 or self-neglect. If ~~an agency other than the county agency conducts the~~
14 ~~investigation, it~~ the elder-adult-at-risk agency refers the report to an investigative
15 agency, the investigative agency shall submit a copy of the investigation report to the
16 county agency advise the elder-adult-at-risk agency in writing of its response to the
17 report. The elder-adult-at-risk agency shall maintain records of suspected abuse,
18 financial exploitation, neglect, or self-neglect.

****NOTE: Please read this paragraph very carefully in light of the discussion concerning "reports" vs. "departmental report forms." In particular, is the last sentence now as you intend? Section 55.043 (6) (am) now mirrors this provision.

19 **SECTION 62.** 46.90 (6) (ac) of the statutes is created to read:

20 46.90 (6) (ac) In this subsection:

1 1. “Departmental report form” includes documentation of an
2 elder-adult-at-risk agency’s response to or investigation of a report made under
3 sub. (5) and is the information required to be submitted to the department.

****NOTE: I deleted “with all client-identifying information removed,” since it creates a substantive requirement in a definition--the requirement is taken care of under s. 46.90 (6) (bv).

4 2. “Record” includes any document relating to the response, investigation,
5 assessment, and disposition of a report made under this section.

6 **SECTION 63.** 46.90 (6) (b) (intro.) of the statutes is amended to read:

7 46.90 (6) (b) (intro.) ~~Reports of suspected abuse, material abuse, neglect or~~
8 ~~self-neglect and investigation reports under this section~~ Departmental report forms
9 are confidential and may not be released by the county elder-adult-at-risk agency
10 or other investigating investigative agency, except under the following
11 circumstances ~~they may be released~~:

****NOTE: Please make sure that this paragraph (which deals with departmental report forms, confidentiality and exceptions) and par. (b) (which deals with records, including departmental report forms, confidentiality and exceptions) are distinguished as you have intended; I checked with Jane Raymond concerning this because I was unsure.

12 **SECTION 64.** 46.90 (6) (b) 1. of the statutes is amended to read:

13 46.90 (6) (b) 1. To the elder ~~person and~~ adult at risk, any person named in a
14 departmental report form who is suspected of abusing ~~or~~, neglecting, or financially
15 exploiting an elder ~~person~~ adult at risk, and the suspect’s attorney. These persons
16 may inspect the departmental report ~~on the investigation form~~, except that
17 information identifying the person who initially reported the suspected abuse,
18 ~~material abuse~~ financial exploitation, neglect, or self-neglect, ~~or any other person~~
19 whose safety might be endangered through disclosure, may not be released.

20 **SECTION 65.** 46.90 (6) (b) 2. of the statutes is amended to read:

1 46.90 (6) (b) 2. To the protective services agency notified or other entity from
2 which assistance is requested under sub. (5) (f). Information obtained under this
3 subdivision shall remain confidential.

4 **SECTION 66.** 46.90 (6) (b) 3. of the statutes is amended to read:

5 46.90 (6) (b) 3. To an individual, organization, or agency designated by the
6 department or as required by law for the purposes of management audits or program
7 monitoring and evaluation. Information obtained under this subdivision shall
8 remain confidential and ~~shall~~ may not be used in any way that discloses the names
9 of or other identifying information about the individuals involved.

10 **SECTION 67.** 46.90 (6) (b) 4. of the statutes is amended to read:

11 46.90 (6) (b) 4. For purposes of research, if the research project has been
12 approved by the department or the county elder-adult-at-risk agency and the
13 researcher has provided assurances that the information will be used only for the
14 purposes for which it was provided to the researcher, the information will not be
15 released to a person not connected with the study under consideration, and the final
16 product of the research will not reveal information that may serve to identify the
17 individuals involved. ~~Such~~ The information shall remain confidential. In approving
18 ~~research projects the use of information~~ under this subdivision, the department shall
19 impose any additional safeguards needed to prevent unwarranted disclosure of
20 information.

****NOTE: Please review my changes. The department is only approving the use
of the information under this subdivision, not the project itself.

21 **SECTION 68.** 46.90 (6) (b) 5. of the statutes is amended to read:

22 46.90 (6) (b) 5. ~~Pursuant to~~ Under a lawful order of a court of record.

23 **SECTION 69.** 46.90 (6) (b) 6. of the statutes is amended to read:

1 46.90 (6) (b) 6. To any agency or individual that provides direct services under
2 sub. (5m), including an attending physician for purposes of diagnosis and treatment,
3 and within the department to coordinate treatment for mental illness,
4 developmental disabilities, alcoholism, or drug abuse of individuals committed to or
5 under the supervision of the department. Information obtained under this
6 subdivision shall remain confidential.

7 **SECTION 70.** 46.90 (6) (b) 7. of the statutes is amended to read:

8 46.90 (6) (b) 7. To the guardian of the elder ~~person~~ adult at risk or the guardian
9 of any person named in a report who is suspected of abusing ~~or~~, neglecting, or
10 financially exploiting an elder person adult at risk. These persons may inspect the
11 departmental report on the investigation form, except that information identifying
12 the person who initially reported the suspected abuse, ~~material abuse~~ financial
13 exploitation, neglect, or self-neglect, or any other person whose safety might be
14 endangered through disclosure, may not be released.

15 **SECTION 71.** 46.90 (6) (b) 9. and 10. of the statutes are created to read:

16 46.90 (6) (b) 9. To a federal agency, agency of this state ~~or~~ any other state, or
17 local governmental unit in this state or any other state that has a need for a
18 departmental report form in order to carry out its responsibility to protect elder
19 adults at risk from abuse, financial exploitation, neglect, or self-neglect.

20 10. To the reporter who made a report in his or her professional capacity,
21 regarding action to be taken to protect or provide services to the alleged victim of
22 abuse, financial exploitation, neglect, or self-neglect.

23 **SECTION 72.** 46.90 (6) (bd) of the statutes is created to read:

24 46.90 (6) (bd) If a person requesting a departmental report form is not one of
25 the persons or entities specified in par. (b), the elder-adult-at-risk agency may

1 release information indicating only whether or not a report was received and
2 whether or not statutory responsibility was fulfilled.

***NOTE: I did not make this paragraph a part of par. (b), as requested, because it differs from the par. (b) in the type of information that may be released.

3 **SECTION 73.** 46.90 (6) (br) of the statutes is created to read:

4 46.90 (6) (br) Notwithstanding par. (b) 1. to 10., an elder-adult-at-risk agency
5 or an investigative agency may not release departmental report forms under this
6 section if any of the following applies:

***NOTE: This provision and s. 55.043 (6) (br) (intro.) now refer to "departmental report forms," in conformity with the changes made to ss. 46.90 (6) (b) and 55.043 (6) (b).

7 1. The elder-adult-at-risk agency determines that the release would be
8 contrary to the best interests of the elder adult at risk who is the subject of the
9 departmental report form or of a ~~minor~~ ^{another person} residing with the subject of the departmental
10 report form, or the release is likely to cause mental, emotional, or physical harm to
11 the subject of the departmental report form or to any other individual.

***NOTE: I don't understand why a minor is specified in this provision. Why would the application be that narrow, i.e., what if release is harmful to a 22-year-old who resides with the subject of the departmental report form?

12 2. The district attorney determines that disclosure of the information would
13 jeopardize any ongoing or future criminal investigation or prosecution or would
14 jeopardize a defendant's right to a fair trial.

15 3. The elder-adult-at-risk agency determines that disclosure would
16 jeopardize ongoing or future civil investigations or proceedings or would jeopardize
17 the fairness of such a legal proceeding.

18 **SECTION 74.** 46.90 (6) (bt) of the statutes is created to read:

19 46.90 (6) (bt) Subject to pars. (b), (bd), (br), (bv), and (bw), records under this
20 subsection are confidential and may not be released by the elder-adult-at-risk

1 agency or other investigative agency, except under the following circumstances, upon
2 request:

***NOTE: Note that I added "Subject to pars. (b), (bd), and (br)" to this provision and to s. 55.043 (6) (bt) (intro.). Those paragraphs allow limited release of information that is, by definition, a part of a record, so otherwise this provision, which limits release of records, would be in conflict with them in some respects.

- 3 1. To the elder adult at risk who is the alleged victim named in the record.
- 4 2. To the legal guardian, conservator, or other legal representative of the elder
5 adult at risk who is the alleged victim named in the record, if the legal guardian,
6 conservator, or other legal representative of the alleged victim is not the alleged
7 perpetrator of the abuse, financial exploitation, or neglect.
- 8 3. To law enforcement officials and agencies in accordance with the policy
9 developed under sub. (3) (a) or with investigations conducted under sub. (5), or a
10 district attorney, for purposes of investigation or prosecution.
- 11 4. To the department, under s. 51.03 (2), or for death investigations under s.
12 50.04 (2t) or 50.035 (5); or to a sheriff, police department, or district attorney for
13 death investigations under s. 51.64 (2) (a). *either* ✓
- 14 5. To an employee of a county department under s. 51.42 or 51.437 that is
15 providing services to the elder adult at risk who is the alleged victim named in the
16 record, *or* to the alleged perpetrator of abuse, to determine whether the alleged
17 victim should be transferred to a less restrictive or more appropriate treatment
18 modality or facility.

***NOTE: I'm not quite sure what this provision and its correspondent (s. 55.043 (6) (bt) 5.) do — it appears as though they permit the alleged perpetrator access to the entire record if the alleged victim needs to be moved. Did you intend that the application be so broad? It appears to conflict with ss. 46.90 (6) (b) 1. and 55.043 (6) (b) 1.

- 19 6. To a court, tribal court, or state governmental agency for a proceeding
20 relating to the licensure or regulation of an individual or entity regulated or licensed

state governmental agency ✓

1 by the department, that was an alleged perpetrator of abuse, financial exploitation,
2 or neglect, ~~and to the board on aging and long-term care, under s. 16.009.~~

****NOTE: I don't understand this subdivision or s. 55.043 (6) (bt) 6.; they seem to provide records to the BOALTC without condition; why should BOALTC be mentioned at all, if staff members are also provided unfettered access under s. 46.90 (6) (b) 10. and s. 55.043 (6) (bt) 10.? Also, please see my change to the term "administrative agency" proposed; I think it would help this draft to have "agency" defined; I would recommend the definition in s. 16.417 (1) (a), stats.

3 7. To the department, for management, audit, program monitoring,
4 evaluation, billing, or collection purposes.

5 8. To the attorney or guardian ad litem for the elder adult at risk who is the
6 alleged victim named in the record, to assist in preparing for any proceeding under
7 ch. 48, 51, 55, 880, 971, or 975 pertaining to the alleged victim.

8 9. To a coroner, medical examiner, pathologist, or other physician investigating
9 the cause of death of an elder adult at risk that is unexplained or unusual or is
10 associated with unexplained or suspicious circumstances.

11 10. To staff members of the protection and advocacy agency designated under
12 s. 51.62 and the board on aging and long-term care under s. 16.009.

****NOTE: Please see the ****NOTE under s. 46.90 (6) (bt) 6.

13 11. To an agency, including a probation or parole agency, that is legally
14 responsible for the supervision of an alleged perpetrator of abuse, neglect, or
15 financial exploitation of an elder adult at risk.

16 12. To a grand jury, if it determines that access to specified records is necessary
17 for the conduct of its official business.

****NOTE: The language of s. 968.26 does not provide for proceedings that are conducted by a tribal court or an administrative agency, so I omitted them from the provision proposed as subd. 13. Having done so, the provision was then redundant to the following provision ("Under a lawful order of a court of record"), so I omitted it entirely. This also applies to its correspondent, proposed as s. 55.043 (6) (bt) 13.

18 13. Under a lawful order of a court of record.